"The difference is not such as to affect his credit" and hand the statement back.

If, however, the difference is so material as probably to amount to a discrepancy affecting the credit of the witness, the Court may permit the witness to be asked whether he made the alleged statement. If he denies having made it, then either the matter must be dropped or the document must be formally proved, by calling the writer or, if he is not available, by proving in some other way that the witness did make the statement.

If the witness admits making the former statement, or is proved to have made it, then the two conflicting versions must be carefully explained to him, preferably by the Court, and he must have a fair and full opportunity to explain the difference. If he can, then his credit is saved, though there may still be doubt as to the accuracy of his memory. This procedure is cumbersome and slow and therefore should not be used unless the apparent discrepancy is material to the issue.

In this trial the witness Usop said :—

> "All the present witnesses were there but I did not notice Mansoor . . . there were many people there".

In his investigation statement he had said :—

> "I saw A,B,C. and one Mansoor there".

The general tenor of his statement accorded with his evidence. Now A, B and C, and also Mansoor, had all given evidence and it was not disputed that Mansoor had in fact been present at the incident. Clearly, therefore, this difference was at the most only a difference in recollection as to one of a number of persons and no further explanation was necessary. The police prosecutor ought not to have referred to it. When he did, the Magistrate should not have allowed him to cross-examine on it. Counsel for the defence, of course, further cross-examined on it and he elicited that Mansoor had been mentioned in answer to a leading question. This was a reasonable explanation. But the point is that the Court elaborately investigated a point of no significance. If Mansoor had been one of the accused persons, the case would have been different because then the question whether or not Mansoor was present would have been in issue.

There is one other point of procedure. It is correct that the accused himself must elect whether to give evidence or not; his advocate cannot choose for him. But there is no objection whatever to the accused consulting his counsel and he should be allowed a minute or so to do that if he so desires.

There was another and serious illegality. The learned Magistrate says in his judgment :—

> "Evidence was brought that accused is a quarrelsome person and that he had quarrelled before and on other occasions".

Evidence that the accused has a bad character is irrelevant during the trial.

After conviction it appeared that accused had been bound over in $50 to keep the peace — period not stated — but this was 18 years ago. This was not a conviction and was too long ago to be a ground for severity.

On the whole case I am of opinion that there was sufficient admissible evidence to support the conviction on both charges but that the undue protraction of the case and the misreception of evidence (for both of which the defence were partly responsible) led the Magistrate to take too serious a view.

I therefore varied the consecutive sentences of four and one months rigorous imprisonment to an order that the accused be released on probation on giving security for his good conduct for nine months.

Sentence Varied.

CHINNIAH AND ANOR. v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Evans, J.) December 19, 1947]

Penal Code Ss. 383 and 384 — Extortion — Charge — Criminal Procedure Code Ss. 153 and 316 (b).

In this case the appellants had been convicted on the following three charges of extortion (1) that they between 28th May, 1947 and 10th July, 1947 at Taiping did extort various sums totalling $620.00 from one Letchumanan Chettiar by putting the said Letchumanan in fear of bodily injury and that they had thereby committed an offence under S. 384 of the Penal Code (2) that they between 30th April, 1947 and 28th July, 1947 at Taiping did extort various sums of money totalling $720.00 from one Sockalingam Chettiar by putting the said Sockalingam Chettiar in fear of bodily injury and that they had thereby committed an offence under S. 384 of the Penal Code (3) that they on 8th July 1947 at Taiping did extort the sum of $100.00 from one Suppiah Pillay by putting the said Suppiah Pillay in fear of bodily injury and that they had thereby committed an offence punishable under S. 384 of the Penal Code. They appealed.

Held, (1) that in the offence of extortion the criminal act is the "obtaining" and an extortioner cannot, any more than a thief be said to take by instalments; (2) that each taking constitutes a separate offence and therefore the date mentioned in the charge should be the date of the actual receipt of the money; (3) that in this case there were several offences included in the first two charges and that those charges were therefore bad; (4) that as regards to the third charge, the prosecution had failed to prove that the payment was made on the date mentioned in the charge and therefore the conviction was wrong.

CRIMINAL APPEAL.

Appellant in person.

M .G. Neal (Crown Cunsel) or the Respondent.

Evans, J. : — The appellants were charged below on three counts as follows :—

1. You, Chinniah and Krishnan are jointly charged that you between 28th May, 1947 and 10th July, 1947 at Taiping did extort various sums totalling $620.00 from one Letchumanan Chettiar by putting the said Letchumanan in fear of bodily injury and that you have thereby committed an offence punishable under Section 384 of the Penal Code.
2. You, Chinniah and Krishnan are jointly charged that you between 30th April, 1947 and 28th July, 1947 at Taiping did extort various sums of money totalling $720.00 from one Sockalingam Chettiar by putting the said Sockalingam Chettiar in fear of bodily injury and that you have thereby committed an offence punishable under Section 384 of the Penal Code.
3. You, Chinniah and Krishnan are jointly charged that you on 8th July, 1947 at Taiping did extort the sum of $100.00 from one Suppiah Pillay by putting the said Suppiah Pillay in fear of bodily injury and that you have thereby committed an offence punishable under Section 384 of the Penal Code.

The prosecution called evidence of a letter dated 27th May, 1947, to the Chetty named in the first count with two others of later date, a letter dated 29th April, 1947, to him named in the second and four others, a letter to Suppiah Pillay, undated, but received on 26th June and two others, the second of which is a receipt only; and of payments made by Letchumanan Chettiar on 29th May and on two subsequent dates, by Sockalingam Chettiar on 7th May, 1947, and on two subsequent dates, and by Suppiah Pillay on 7th July, 1947. Another letter, not addressed to any of these persons, was put in evidence, it is said in order to explain the reference to S.T.A.V. in the letter to Sockalingam Chettiar, although this reference was fully explained by another witness. No evidence was given as to handwriting, nor does that matter seem to have been considered. Section 153 of Criminal Procedure Code reads :—

> 153. (i) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.
>
> (ii) When the accused is charged with criminal breach of trust or dishonest misappropriation of money it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 164; provided that the time included between the first and last of such dates shall not exceed one year.

Sub-section (ii) should be strictly confined to the offences named, that is, to offences under Sections 403 and 405 of the Penal Code, cases in which the accused is under a duty to account. The presumption of innocence is no empty hypocrisy. It must be respected, and charges must be drawn in compliance therewith. It follows that they must not be drawn on the assumption that accused knows what events are referred to, but that he does not know. The first two charges are, on the face of them, vague. That vagueness is not in any way justified by the evidence as the dates of the various alleged transactions can be fixed exactly and in most cases by written record. It is simply used as a screen under cover of which evidence of a whole series of transactions is introduced and that series might have been even more numerous than it was. There might be different defences as to the different days.

The consideration of these charges raised the question of the true nature of the crime of extortion and the time at which it should be properly laid. There seems to be no authority whatever on these points. The crime of extortion at English law denotes another and definite offence. In the Penal Code it is defined in Section 383 as follows :—

> 383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits extortion.

From this it might be supposed two acts, not necessarily contemporaneous, are contemplated, one of putting in fear and one of taking delivery of property. *Gour* [5th Edition, Section 4488 et seq] devotes some space to the discussion of this offence. He seems to regard the delivery of property as the essence of the offence, but he goes on to discuss what he describes as the analogous English law. The sections of the English law he refers to have long since been repealed, but are now to be found with little alteration in Sections 29-31 of the Larceny Act, 1916. He thinks all these disjointed provisions of the English Statutes have been boiled down in this single provision. He returns to the subject in his commentary on Section 390 — Robbery.

It may not be unprofitable to glance at the English law. Before the "boiling down" process the law clearly defined acts which could be accurately laid, and the seriousness of the offences depended on the nature and mode of the threat, and therefore on the act of the accused, and not on the effect on the victim. On facts such as these, the offence may be uttering a threatening letter which is punishable with penal servitude for life. If property is actually obtained under a threat, written or otherwise, it is robbery and punishable with 14 years' penal servitude. The offence at English law which, according to Gour corresponds to extortion as here defined, is that of demanding with menaces with intent to steal, which is punishable with 5 years' penal servitude. This offence consists, however, in the demand only, which may be oral, or even by gesture, and which is not of the more serious kind dealt with in Section 29 (1) (iii). There is no question of any delivery.

The offence defined in Section 383 of the Penal Code, if committed, is punishable under Section 384 with 3 years' imprisonment. The Code goes on to prescribe heavier penalties for putting in fear of injury (s. 385), or in fear of death or grevious hurt (s. 387), and for extortion under the latter fear, (Section 386). The former sections seem to correspond with the English provisions regarding uttering threats, and the threat, or the putting in fear is the offence, and these are distinguished from extortion under Section 386, where property is actually obtained. The same distinction is observable between Sections 388 and 389, the offences under which are defined by the nature of the threat. The illusive nature of the crime of extortion as here defined is best illustrated by the fact that when threat and obtaining are contemporaneous, and the crime appears to be reduced to its simplest proportion, it suddenly changes its character and becomes, in most cases, robbery.

Gour analyses extortion as (i) intentional, (ii) intimidation, (iii) inducing, (iv) delivery of property, and accepting these heterogeneous categories of adjective, participle, and substantives, it is clear that the first three are of a mental or spiritual nature, and only the last a physical act, for (ii) does not refer to an act of intimidation but to the condition produced, although some act of the accused must probably be proved to shew the intention and causation. This last act is, however, only evidence of an element in the crime and not the criminal act.

The learned Crown Counsel contended that the putting in fear was the essence of the offence, and the different payments must be regarded as instalments of one. The distinction drawn in the sections cited and the above considerations clearly shew, however, that the criminal act is the obtaining, and if this be so an extortioner cannot, any more than a thief, say he has taken by instalments only. Each separate receiving is a separate offence. The other elements may continue and are not conditioned by time and place. It is clear, therefore, that the dates mentioned in the charge are not those of the criminal acts, and that in the first two several offences are charged in each. They are manifestly bad and no proper trial could be had on them. They should be quashed.

The third charge refers to one payment only, but that payment was not proved on the date laid. The charge cannot be altered after judgment, and there is therefore no purpose in altering the finding.

The letter Ex. P. 1 was not addressed to any of these victims and was quite unnecessary for the suggested purpose of its production. It does not prove the meaning of the letters to S.T.A.V., nor that the recipient was a member of that firm, nor that he was killed. On the other hand, it was a letter the writing of which the 2nd appellant could not deny. It tended to shew he had been connected with another similar offence. It can only have been introduced to prejudice the fair trial of the 2nd accused and should not have been admitted.

My powers are limited by Section 316 (b) of the Criminal Procedure Code, and the only order I can make on this is to reverse the finding and sentence and discharge the appellants.

Appeal Allowed.